



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

CHAN

March 20, 2008

Memorandum for: Chief of Personnel

Subject: **ADMINISTRATIVE TRANSFER, AND TRANSFER
RESTRICTION OF A UNIFORMED MEMBER OF THE
SERVICE**

1. P.O. Josephine Emeli, Tax # 926803, was recently the subject of Disciplinary Case No. 82022/06.
2. Separate and apart from the disciplinary process, the Police Commissioner also mandates that P.O. Emeli be transferred to a P.S.B. Precinct enforcement command. Further, **P.O. Emeli will not be the subject of any future transfer without the explicit approval of the Police Commissioner.**
3. Forwarded for necessary attention.

BY DIRECTION OF THE POLICE COMMISSIONER

Lowell Stahl
Assistant Chief
Commanding Officer
Police Commissioner's Office



POLICE DEPARTMENT

September 26, 2007

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Police Officer Josephine Emeli
Tax Registry No. 926803
Police Service Area No. 2
Disciplinary Case No. 82022/06

The above-named member of the Department appeared before me on August 24, 2007, charged with the following:

1. Said Police Officer Josephine Emeli, assigned to PSA 2, on or about July 14, 2005, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that Police Officer Emeli did wrongfully and without just cause fail to accept a notification for the appearance of an officer who was scheduled for a DOLE test. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

2.¹ Said Police Officer Josephine Emeli, assigned to PSA 2, on or about July 14, 2005, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that Police Officer Emeli, during an integrity test, failed and neglected to provide her name when requested and did not provide the appropriate information to the undercover caller. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office, and the Respondent was represented by Craig Hayes, Esq.

The Respondent, through her counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the

¹ The amended charges, dated November 29, 2006, contain two specifications, but are labeled #1 and #3. The second specification on the original charges, dated June 26, 2006, was dismissed on December 5, 2006.

mitigation hearing has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found Guilty as charged.

EVIDENCE IN MITIGATION

The Respondent was appointed to the Department in September 2000 and has spent her entire career in Police Service Area 2 in East New York, Brooklyn. On July 14, 2005, the Respondent testified that she was assigned to work "TS," which meant that she was the telephone switchboard operator (TS operator). The Respondent stated that she was working as the TS operator that day because she was pregnant and thus on limited duty.

The Respondent testified that she received a phone call from another member of the Department who "wanted to give somebody a notification for a Dole² test." The Respondent testified that the officer for whom the test was scheduled was not present; that officer was working a day tour, whereas the call came in during the Respondent's midnight tour. When the Respondent told the caller that the officer in question was not present, the caller asked for that officer's phone number. The Respondent repeated to the caller that the officer was not present because she was working a day tour, "[a]nd that was the end of that conversation." The Respondent admitted that she did not take the notification and give it to the officer as requested by the caller, but now realizes that she was supposed to have done so.

² This refers to drug testing of members of the Department.

The Respondent testified that she next received a phone call from someone she now realizes was an undercover officer. The caller angrily stated that his wife had gotten a ticket in Queens. The caller added that his wife did not deserve the ticket, and he wanted to know why she had received it. The Respondent testified that she did not know why the caller's wife had gotten the ticket, that the Respondent had not issued it to her, and told the caller that because he had called a Brooklyn command, and the ticket incident had occurred in Queens, "it would be better" for the caller to go to the precinct of occurrence.

The Respondent testified that the caller then asked for her name and the telephone number of the Civilian Complaint Review Board. The Respondent contended that there were several officers around her and she did not "want to look like a snitch giving somebody the CCRB number to somebody I didn't know." The Respondent testified that she felt the same way about giving the caller her name. After the caller got angrier, however, the Respondent asked people around her what the CCRB number was. The Respondent claimed that by the time she got the number, the caller had hung up.

The Respondent maintained that she has again worked as the TS operator since July 14, 2005, and now understands that when doing so, she is to give her name if a caller asks for it. The Respondent also asserted that she has learned "the appropriate manner to deal with either a Dole test notification, civilians calling, things like that." She believed that she had learned from "this whole process, [her] receiving charges, the initial plea, the case returning³ and everything else."

³ The Respondent had originally pleaded guilty to the amended Charges and Specifications on December 5, 2006. The recommended penalty of forfeiture of 15 vacation days was rejected by the Police Commissioner. See *Penalty*, *infra*.

On cross-examination, the Respondent asserted that the person who called about the drug-testing notification hung up on her. The Respondent acknowledged that her lieutenant, who was at the desk, then received a telephone call. The lieutenant told the Respondent, "oh, somebody said that you were rude on the phone." The Respondent answered her lieutenant that someone had called "but they didn't tell me any information. They didn't identify where they are calling from." The Respondent testified that her lieutenant told her that it was the Department's Medical Division that called, and that the caller was on the phone again and that the Respondent should take down the message. The Respondent said that she returned to the phone, spoke to the caller again, and took the message.

The Respondent also admitted on cross-examination that when the second individual called, it was possible that she told him that if he wanted the CCRB phone number, he should look in the Yellow Pages. The Respondent testified that she could not recall if she made that remark or not.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). The Respondent was appointed to the Department on September 29, 2000. Information from her personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent had originally pleaded Guilty on December 5, 2006, in exchange for a negotiated recommendation that she be required to forfeit 15 vacation days as a

penalty. On June 4, 2007, the Police Commissioner rejected the recommended penalty and directed the Department Advocate to make a new plea offer consisting of the forfeiture of 25 vacation days and the imposition of one year of dismissal probation.

The Respondent has pleaded guilty to two improper actions, committed on the same day, while working as the telephone switchboard operator at her command: (1) failing to accept a notification from the Medical Division for another officer to appear for a drug test, and (2) failing to give her name and the number for the Civilian Complaint Review Board during a phone call made as part of a Courtesy – Professionalism – Respect (CPR) test.⁴

In Disciplinary Case Number 80783/05, the Respondent, a six-year Department member with one prior disciplinary adjudication, forfeited 30 vacation days and was placed on one year of dismissal probation as a result of several incidents: becoming “loud” and belligerent when a supervisor instructed her to take an accident report; discourtesy to a supervisor upon receiving an annual evaluation she did not like; providing substandard responses to a telephone request for guidance in reporting an incident; and failing to prepare an Invoice Worksheet for firearms she had been given to voucher. The original recommended penalty of 15 vacation days was disapproved by the Police Commissioner. The trial commissioner’s decision noted that the Respondent had apparently developed a pattern of avoiding work and not taking responsibility for her actions when confronted by her superiors.

Here, the Respondent’s actions were similar in scope to the aforementioned case. While the Respondent was not necessarily belligerent during the telephone conversations in question, she certainly acted out of a highly troubling lack of consideration toward her

⁴ Specification Number 3 refers to the incident as an integrity test.

job responsibilities. The proper processing of drug-test notifications is essential to the drug-testing program because it ensures that a chosen officer proceeds immediately to the Medical Division for testing, thus preventing any evasion of the test. By telling the staff member from the Medical Division essentially to “call back later” when the officer being tested would arrive, the Respondent could have potentially interfered with the test.

The facts of the second specification to which the Respondent has pleaded guilty are even more serious because she believed that she was dealing with a member of the general public during that phone call. Her explanation for failing to give the caller the phone number for the Civilian Complaint Review Board – that she did not want to seem like a “snitch” in front of other officers – fails for several reasons. First, the Department’s policy is that members of the service are to cooperate fully with CCRB investigations, see Patrol Guide § 211-14, Note 1. It follows that it was highly improper for the Respondent to refuse simply to give out that agency’s phone number for fear of being seen as a “snitch.” Indeed, the Respondent’s belief that facilitating a civilian’s complaint to the CCRB by giving out a mere phone number is something that might make her a pariah among other police officers, and therefore was to be avoided at the cost of ignoring a civilian’s phone call, speaks volumes to her level of care and respect for the public and for her duties as a police officer. The Respondent admitted that she finally decided to ask other officers for the CCRB phone number because the caller became increasingly angry, but by the time she did so, the caller had hung up.

The second reason that the Respondent’s explanation fails is that she would not even have had to reveal to all of the surrounding officers that she was giving out the

number to the CCRB. She could have asked the caller to hold on, and then quietly asked a supervisor for the number. Instead, she equivocated until the caller hung up.

The Respondent also admitted that she improperly failed to give the caller her name when asked. The only possible excuse the Respondent gave for not doing so was that the caller was angry. However, while the Respondent testified on direct examination, in response to the question, "As far as your name goes, did he seem angry, did you think he was going to take his anger out on you?," that "Yes, he was really angry," the Respondent later specifically denied, upon the Court's questioning, that she was worried about the caller targeting her for some kind of retribution. In any event, the explanation would fail because a police officer is expected to deal calmly and courteously with members of the public, many of whom will likely be angry or upset about whatever has brought them into contact with the police. Again, the real explanation seems to be that the Respondent simply was uninterested in properly responding to a citizen's telephone call.

The Respondent's counsel argued during summation that the new offer was too harsh under the circumstances. Counsel suggested that such a penalty was more suited to a case like Disciplinary Case Number 78982/03.⁵ There, the Respondent failed an integrity test when his lieutenant ordered him to process an individual who had just been arrested for entering the subway without paying. The individual (apparently in fact an undercover officer) volunteered that he had several bags of marijuana in his pocket. Instead of vouchering the marijuana (which was fake) and arresting the "suspect," the Respondent issued him a summons after seeing that he had no warrants, and placed the

⁵ Counsel appears to have been speaking of this Disciplinary Case based on his recitation of the facts and the last name of that Respondent.

“marijuana” into a coffee cup, which he then threw into the garbage. (The Respondent was charged in a separate specification with failing to safeguard his firearm, having left it in a kitchen cabinet at his home). The trial commissioner recommended a penalty of the forfeiture of 30 vacation days and serving one year on dismissal probation. The recommendation was approved by the Police Commissioner on September 23, 2005.

Counsel’s argument is respectfully rejected. The Respondent’s behavior in the earlier case had a very similar basis to that in the instant case: lack of interest in the proper performance of the job of a police officer. While defense counsel argued on summation that the officer in the earlier case was moved by the arrestee’s plea to “give him a break,” the trial commissioner’s decision reveals no such motive. In fact, that officer admitted that the reason he did not arrest the man was because he had been fatigued the whole day, having had only four hours of sleep because he worked on his son’s science project. The officer stated that he then woke up early to take his son to school, attended the funeral of his best friend’s father; and then reported to duty at 4:00 p.m. The Respondent also stated that if he had processed the arrest, it would have taken the whole day, would have likely resulted in overtime, and he did not want to miss the funeral. However, on cross-examination, the Respondent testified that he could have explained his situation and asked his lieutenant to process the arrest.

The instant Respondent’s conduct is thus quite similar. Both officers did not want to be bothered by perhaps mundane aspects of police work. Both took improper considerations into account when dodging the particulars of their job. Just as it was unacceptable for the Respondent in the earlier matter to turn an arrest into a summons by throwing away evidence because he was tired and did not want to spend time processing

the arrest, it was unacceptable for the current Respondent to act rudely toward a member of the public simply because that citizen was upset or because the officer did not want to be perceived as a "snitch" by rendering assistance. Like the earlier officer's fatigue, the current Respondent's pregnancy was no excuse for failing to handle a phone call. Finally, in both situations, any problem could have been easily resolved by asking a supervisor for assistance.

In formulating a penalty recommendation I have also taken into consideration the Respondent's performance record, including multiple Command Disciplines. I reject her attorney's argument on summation that the instant charges and those in her prior disciplinary history are minor offenses. Rather, dismissal probation is appropriate in this matter because, viewed cumulatively, it appears that the Respondent has a long pattern of neglect toward Department rules and regulations.

I therefore recommend that the Respondent be DISMISSED from the New York City Police Department, but that her dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code of the City of New York, during which time she is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. I further recommend that the Respondent forfeit 25 vacation days.


Respectfully submitted,



David S. Weisel

Assistant Deputy Commissioner – Trials

APPROVED



MAR 11 2008
RAYMOND W. KELLY
POLICE COMMISSIONER